

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

FAO.No. 18 of 2007()

**AGAINST THE ORDER DATED 24/08/2006 IN IA 2023/2006 IN
OS.3/2006 of DISTRICT COURT, THRISSUR**

.....

APPELLANT/PETITIONER:

**UKKENS COPRA CENTRE AND OIL MILLS,
REPRESENTED BY ITS MANAGING PARTNER
U.A. PAPPACHAN, EDAKULAM,
MUKUNDAPURAM TALUK, IRINJALAKUDA,
THRISSUR-680 688.**

**BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.SREEKANTH.K.R
SRI.JIBU P THOMAS
SRI.SUNIL J.CHAKKALACKAL**

RESPONDENT - DEFENDANT:

**KALLUMKUNNU SERVICE CO-OPERATIVE
BANK LIMITED, NO.R.314, REPRESENTED BY
ITS SECRETARY, NADAVARMBA P.O.,
THRISSUR.**

**BY ADV. SRI.C.HARIKUMAR
SRI.ARAVINDA KUMAR BABU T.K.**

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY
HEARD ON 05/11/2007, THE COURT ON THE SAME DAY
DELIVERED FOLLOWING:**

K. PADMANABHAN NAIR, J.

=====

F.A.O. NO. 18 OF 2007

=====

Dated this the 5th day of November, 2007

J U D G M E N T

Petitioner in I.A. No.2023 of 2006 who is the plaintiff in O.S. No.3 of 2006 on the file of the District Court, Thrissur, is the appellant. Appellant firm is represented by its Managing Partner. Appellant filed the suit under the Trade Marks Act alleging that the respondent, a Service Co-operative Bank, is selling goods manufactured by the appellant as if it were their product. In the suit appellant filed an application under Order XXXIX Rule 1 of the Code of Civil Procedure to restrain the respondent from using the trade mark, namely, 'Kalpasree'. Respondent contested the matter. It was contended that the application filed by the respondent is also pending before the competent authority. It was further contended that the Bank started using the trade mark from 12.8.2002 onwards. It was also contended that the appellant is the subsequent user of the trade mark and hence it is not entitled to an order of injunction. Appellant submitted that the application filed by the appellant for registration of trade

mark is also pending .

2. Trial court did not grant any order of injunction and dismissed the application. Challenging that order, this appeal is filed.

3. Though this Court admitted the appeal, no interim order of injunction was passed in favour of the appellant. During the pendency of the appeal appellant filed I.A. No.3847 of 2007 for admitting additional evidence. Along with the said I.A. appellant produced the certificate of registration issued by the competent authority by which it had given trade mark registration by name 'Kalpasree Micro Filtered Coconut Oil'. Learned counsel appearing for the appellant has argued that in case this Court is not inclined to pass an order of injunction on account of the passage of time, the FAO itself may be disposed of with a direction to the trial court to dispose of the suit in accordance with law considering the effect of registration certificate obtained by the appellant. Learned counsel appearing for the respondent, on the other hand, argued that the appellant is not entitled to get a direction in regard to the registration certificate. It is argued that the

respondent is having very serious objection regarding the registration granted to the appellant. It is also argued that the respondent has filed a petition for rectification and that is pending. Learned counsel for the respondent relied on a decision reported in Mohan Cold Water Breweries Pvt. Ltd. v. Khoday Distilleries Pvt. Ltd. (1977 Vol.2 IPLR 83) in support of his argument.

4. I do not think it necessary to pass any orders in the matter at this stage. Appellant filed the suit and also an injunction application for restraining the respondent from using the trade mark by name 'Kalpasree". Material on record shows that both parties applied for registration of the trade mark. Appellant produced a copy of the registration certificate issued by the competent authority. But what exactly is the legal effect of the registration is a matter to be considered by the trial court in accordance with law.

5. I am of the considered opinion that the issue is to be considered by the trial court. I make it clear that I am not expressing any opinion regarding the merits of the contentions raised by either side. It is open to the respondent

to raise all its objections at the time of trial of the suit.

In the result, the appeal is disposed of with a direction to the trial court to dispose of the suit untrammelled by any of the observations contained in this judgment and also considering the effect of the amendment of various Sections in the Trade Marks Act in the year 2003.

K. PADMANABHAN NAIR, JUDGE.

K. PADMANABHAN NAIR, J.

M.F.A.O. NO. 18 OF 2007

J U D G M E N T

TH NOVEMBER, 2007